

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JOHN AARON
123 First Street North
Alabaster, AL 35007,

Plaintiff,

V.

Civil Action No.

U.S. DEPARTMENT OF JUSTICE,
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, as well as agency FOIA regulations, challenging the failure of the United States Department of Justice and its component agency, the Executive Office for United States Attorneys (“EOUSA”) to fulfill the request of John Aaron for documents relating to the recusal of United States Attorney for the Middle District of Alabama Leura Garrett Canary in May 2001 in connection with the investigation of the state of Alabama’s employees and former employees.

2. This case seeks declaratory relief that defendant is in violation of the FOIA for failing to fulfill plaintiff's request for records and injunctive relief that defendant immediately and fully comply with plaintiff's request under the FOIA.

JURISDICTION AND VENUE

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 702, which gives the Court jurisdiction over agency actions where an aggrieved party has suffered wrong within the meaning of a “relevant statute,” here the FOIA. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 703, 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Plaintiff John Aaron is a resident of the state of Alabama. Plaintiff is the requester of the records being improperly withheld by defendant.

5. Defendant Department of Justice is an agency within the meaning of 5 U.S.C. § 552(f). The EOUSA is a component of defendant. Defendant is the federal agency with possession and control of the requested records and is responsible for fulfilling Mr. Aaron’s FOIA request.

STATUTORY FRAMEWORK

The Freedom of Information Act

6. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

7. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency’s determination whether or not to fulfill the request and of the requester’s right to appeal the agency’s determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

8. An agency must respond to a FOIA appeal within 20 working days, notifying the appealing party of the agency's determination to either release the withheld records or uphold the denial. 5 U.S.C. § 552(a)(6)(A)(ii).

9. In "unusual circumstances," an agency may delay its response to a FOIA request or appeal, but must provide notice and must also provide "the date on which a determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B).

10. This Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

11. The FOIA provides a mechanism for disciplinary action against agency officials who have acted inappropriately in withholding records. Specifically, when requiring the release of improperly withheld records, if the court makes a written finding that "the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously," a disciplinary investigation is triggered. 5 U.S.C. § 552(a)(4)(F).

FACTS GIVING RISE TO PLAINTIFF'S CLAIMS FOR RELIEF

12. On February 6, 2006, plaintiff John Aaron sent a FOIA request to the FOIA Contact at the Justice Management Division seeking information regarding the recusal of Leura Canary, the U.S. Attorney for the Middle District of Alabama on or about May 16, 2001 in connection with the investigation of state of Alabama's employees or former employees.

13. By letter dated March 27, 2006, the EOUSA acknowledged receipt of plaintiff's request. The EOUSA identified it as request number 06-819.

14. On May 12, 2006, plaintiff John Aaron sent a second FOIA request, this one to the United States Attorney's Office located at 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530. This second request also sought information regarding the recusal of Leura Canary, the U.S. Attorney for the Middle District of Alabama on or about May 16, 2001 in connection with the investigation of state of Alabama's employees or former employees.

15. By letter dated June 21, 2006, the EOUSA denied Mr. Aaron's request in full. The EOUSA cited 5 U.S.C. § 552(b)(5), (b)(6), (b)(7)(A) and (b)(7)(C) as the exemptions invoked for withholding the material in its entirety. The EOUSA also advised plaintiff of his right to administratively appeal the decision.

16. By letter dated July 5, 2006 to the Office of Information and Privacy ("OIP"), United States Department of Justice, Mr. Aaron appealed the EOUSA's total denial of his request.

17. By letter dated July 19, 2006, OIP acknowledged plaintiff's appeal. OIP informed him the matter had been assigned appeal number 06-2508.

18. By letter dated September 18, 2006, OIP made its decision on plaintiff's appeal. OIP stated that the appeal was being remanded to the EOUSA for further processing of the responsive records and that the EOUSA would send any releaseable portions of these records directly to Mr. Aaron.

19. By letter dated December 16, 2006, plaintiff sent a letter to the EOUSA asking for the status of his request.

20. By letter dated June 27, 2007, the EOUSA made its second decision on Mr. Aaron's request. This time the EOUSA released two (2) pages of records in full, but

withheld 514 pages in full. The two pages released were a press release dated May 16, 2002. The EOUSA invoked 5 U.S.C. § 552(b)(5) and (7)(C) as the exemptions allowing for it to totally withhold the 514 pages. The EOUSA again advised plaintiff of his right to administratively appeal its decision.

21. By letter dated July 17, 2007, to OIP, plaintiff again administratively appealed the EOUSA's action on his request.

22. By letter dated December 7, 2007, OIP again remanded plaintiff's request to the EOUSA for further processing of requested records.

23. On January 21, 2009, President Barak Obama issued a Presidential Memorandum stating that the FOIA should be operated with a clear presumption of openness. He then directed his attorney general to establish guidelines to make the FOIA more open.

24. On March 19, 2009, Attorney General Eric Holder issued FOIA Guidelines as directed by President Obama. The Attorney General strongly encouraged agencies, including his own, to make discretionary releases of requested material.

25. By letter dated April 1, 2009, plaintiff sent a letter to the EOUSA asking for a status of his request.

26. By letter dated April 30, 2009, the EOUSA blatantly ignored the position of the President and the Attorney General by completely denying most of the records responsive to plaintiff's request. The EOUSA misstated OIP's position on the matter by saying that OIP had affirmed its "initial decision on the condition that I provide some additional information to you." The EOUSA then released 187 pages of newspaper articles to plaintiff and stated that "3 pages originated with another government

component.” The three (3) pages were referred to OIP for processing and direct response to plaintiff. Plaintiff was not provided any basis for the withholding of the remaining material responsive to his request, nor was he provided any administrative appeal rights.

REQUESTS FOR RELIEF

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court:

- (1) Declare that the U.S. Department of Justice and its component EOUSA has violated the Freedom of Information Act by failing to lawfully satisfy plaintiff's FOIA request;
- (2) Order defendant to release immediately all records responsive to plaintiff's FOIA request;
- (3) Award plaintiff its reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (4) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Scott A. Hodes
(D.C. Bar No. 430375)
P.O. Box 42002
Washington, D.C. 20015
Phone (301) 404-0502
Fax (413) 641-2833

Attorney for Plaintiff

Dated: May 6, 2009